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No. 88-93

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

UNION PACIFIC RAILROAD COMPANY,
MISSOURI PACIFIC RAILROAD COMPANY,
THE WESTERN PACIFIC RAILROAD COMPANY, and
SPOKANE INTERNATIONAL RAILROAD COMPANY,
Petitioners,

v.

TERRY F. MORITZ, TRUSTEE OF
IOWA RAILROAD COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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REPLY BRIEF OF PETITIONERS

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In the petition we argued that review of the decision of the Seventh Circuit was warranted both because that decision clearly conflicted with the decisions of other courts of appeals and because the impact of the holding below on the interline rail network between large and small railroads would be significant and adverse. Respondent attempts to explain away the conflicts and asserts that the facts of this case are "unique." But a conflict in the circuits exists and the unprecedented ruling of the Seventh Circuit directly affects interline transfers with 230 separate small railroads, who employ the

same system of interline balances as the Iowa Railroad did in this case. Accordingly, certiorari should be granted.

1. The linchpin of respondent's argument (Opp. 7-8) is that the Third Circuit's opinion in *In re Penn Central Transp. Co.*, 486 F.2d 519 (3d Cir. 1973) (en banc), *cert. denied*, 415 U.S. 990 (1974), involves simply an interpretation of state law. On that basis, respondent claims that the differences between the decision below and the Third Circuit do not warrant review by this Court.

We anticipated this argument in our petition and explained there (Pet. 16) that the absence of anything in the *Penn Central* majority's opinion which purported to rely upon the law of a specific state undermined the Seventh Circuit's attempt to distinguish that case. Respondent does not, nor could he, point to any specific language in *Penn Central* purporting to apply any state's rule of decision. Moreover, nowhere does the Seventh Circuit explain what differences exist between Illinois law and Pennsylvania law (or Michigan law) that would justify a different result in essentially identical cases.

More important, however, is the Third Circuit's own interpretation of *Penn Central*. In *In re Lehigh and New England Ry. Co.*, 657 F.2d 570, 576 (3d Cir. 1981), which respondent begrudgingly concedes (Opp. 9 n.3) "discuss[es] the issue of whether federal or state law applies to the question," the Third Circuit itself indicated unequivocally that under *Penn Central* the question "should be governed by federal law." Thus, respondent's proposed reading of *Penn Central* is beside the point; that court has already made plain that if this case had arisen in Pennsylvania, New Jersey or Delaware, instead of in Illinois, federal law would have been applied and the balance at issue would have been held in trust.

Respondent is also forced to ignore the Sixth Circuit's decision in *In re Ann Arbor R.R. Co.*, 623 F.2d 480 (6th Cir. 1980), which relied upon the concurring opinion by Judge Adams in *Penn Central*, which respondent concedes was based on an interpretation of federal law. There is simply no way to distinguish the Sixth Circuit's holding that federal law imposes a trust for the carrier's benefit from the decision below in this case that federal law provides no protection to petitioners.[1]

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[1] Respondent relies heavily upon this Court's holding in *Butner* v. *United States*, 440 U.S. 48 (1979), as an intervening event which arguably undermined prior decisions holding that a federal common law rule should be applied in this case. The problem with that claim is that both the *Ann Arbor* decision and the *Lehigh* decision post-dated *Butner* and both still relied upon federal common law as the basis for imposing a trust on interline balances held by the collecting railroad. Moreover, this Court in *Butner* merely held that there is no federal common law of bankruptcy. In so holding, the Court expressly acknowledged that some other "federal interest," such as a unified rail system, could require "a different result." 440 U.S. at 55. This Court in *Butner* certainly did not hold that there can never be federal common law rights protected in a bankruptcy proceeding. Thus, nothing in *Butner* diminishes the conflict in the circuits or undermines those decisions holding that the interline balances should be held in trust.

Respondent also relies upon the Staggers Rail Act of 1980, 49 U.S.C. § 10101a, as an intervening event of relevance. Respondent states that Staggers " 'does not mention promoting a unified [national] rail system.' " Opp. 6, quoting Pet. App. 11a. But even the court below acknowledged that under Staggers, a unified rail system "is an important federal objective." Pet. App. 11a. Congress was more direct: "the purpose of [the Staggers] Act is to provide for the restoration, maintenance and improvement of the physical facilities and financial stability of the *rail system of the United States.*" Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980). Under Staggers, railroads are still obligated to receive freight from a connecting carrier because of the importance of an integrated rail system. 49 U.S.C. § 10703(a)(1) ("[r]ail . . . carriers shall establish through routes with each other"); 49 U.S.C. §§ 10741, 10742. See 49 U.S.C. § 10705(h) (unlike motor carriers, rail car-

2. Respondent does not directly dispute petitioners' claim that the elimination of trust treatment for interline balances will create significant disruptions in the relationships among carriers. Pet. 18-19. It does point out that its system of handling interline balances (the bill and voucher system) is different from that at issue in *Penn Central* (the sight draft system). Opp. 10-11.

In the petition we discussed that issue and explained why the factual difference between methods of payment is not legally important. Pet. 16 n.17. And respondent does not directly answer that argument. Instead, he appears to argue that the use of the bill and voucher system is sufficiently "unique" that the issue is not important enough to warrant this Court's attention.

There is nothing unique, however, about the Iowa Railroad's method of handling interline balances. According to the Brief of the Association of American Railroads and the American Short Line Railroad Association as *Amici Curiae* at 9, there are about 230 railroads which employ the same method of reimbursement as the Iowa Railroad. Nor is the size of the railroad a good indication of how much of the $26 billion in annual interline revenues is exchanged through the bill and voucher system. Even if freight is only shipped on a few miles of railroad controlled by the collecting railroad, it will still collect for the whole trip, which could be thousands of miles and thousands of dollars. This case illustrates the point; the Iowa Railroad owes petitioners approximately $1.4 million, even though it owned no track and was in business for only three years.

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riers are granted no statutory right to cancel through routes when a connecting carrier fails to settle interline accounts promptly). Thus, Congress, in enacting the Staggers Act, continued to recognize the significant federal interest in ensuring that arrangements between railroads are such that interline transfers will continue without serious interruption. See *Lehigh*, *supra*, 657 F.2d at 575 (relying upon policy to ensure "sound rail transportation system" in 49 U.S.C. § 10101a(4) as encouraging interline transfers).

In sum, the fact that the Iowa Railroad used a bill and voucher system does not diminish the practical significance of the holding below which undermined the industry's justifiable reliance upon the *Penn Central* trust doctrine in developing an efficient and effective system of interline balances.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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